



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,201	07/22/2005	Nick Buckley	P08400US00/MP	8636
881 7590 03/27/2009 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER BUL, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 03/27/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,201

Applicant(s)

BUCKLEY, NICK

Examiner

Luan K. Bui

Art Unit

3728

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 7-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Prosecution Application

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/2009 has been entered.

Specification

2. The disclosure is objected to because of the following informalities: on page 1, line 7, the phrase "set forth in claim 1" is objected because the paragraph has no meaning if claim 1 is canceled during the prosecution of the application. Appropriate correction is required.

Drawings

3. After further reconsideration, the drawings are objected to because Fig. 3a shows four views with only one description, Fig. 3b shows three views with only one description, Fig. 3c shows five views with only one description and Fig. 3d shows three views with only one description. Each view must have its own label and description is required. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from

the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 17-21, 23-27 and 29-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 16, the phrase "at least one opening for engagement with one or more protrusions..." is inaccurate because "at least one opening" is considered as one opening and the one opening can not engage with more protrusions. In claim 18, the phrase "cross-section"[sic] is incomplete and indefinite. The phrases "said protrusions" in claims 19 and 21 and "the protrusions" in claims 20 and 23, and "said cover part" and "the cover part" in claim 10 are inconsistent and lack proper antecedent basis. The phrases "said openings" and "corresponding protrusions" in claim 18, "said out surface" in claim 23, "the interface" in claims 24-27, "the under side" in claim 29, "said one or more protrusions" in claim 32, "said planar face

of the protrusions” in claims 34-35 lack proper antecedent basis. In claim 11, the phrase “of the is relatively coarse” is incomplete and indefinite. In claim 10, “those” should be replaced with --the--.

The claim(s) are narrative in form and replete with indefinite, inconsistent and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 5, 7-9, 16, 17, 19, 22, 24, 29-33 and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambert (2,978,162). Lambert discloses a display and distribution packaging unit for eggs comprising a bottom part (10) including nonplanar side surfaces of egg-shaped compartments (Figure 4) which match at least partially the outer contours of the eggs contained within the unit and a cover part (11) including a top surface (20) and substantially planar front and rear side surfaces (35, 36) and planar opposing end faces (60, 61). The rear side surface is permanently attached (12) to the bottom part and the front side surface comprises an opening to the unit. Lambert further discloses the cover part comprises partial ovoid portions (61, 62) extending outwardly from at least one of the planar end faces.

As to claim 2, the partial ovoid portions are about one quarter of a complete ovoid (Figure 2).

As to claims 16-17, Lambert further discloses the cover part on the planar front side is provided with at least one opening (16) for engagement with at least one protrusions (17) provided on the bottom part (10, 13).

As to claim 22, Lambert also discloses advertising indicia can be impressed on the surfaces of the unit (column 1, lines 30-32).

As to claims 29-31, Lambert further discloses a pattern of supporting ribs on an underside of the bottom part (Figures 4-6).

As to claim 40, Lambert discloses the planar front and rear surfaces being longer than the planar end faces (Figure 2).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 10-15, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert in view of The French Patent No. FR2731986 to Menu (hereinafter Menu'986).

Lambert discloses the packaging unit as above having most of the limitations of the claims except for the partial ovoid portions comprises a different surface structure than the remaining portions of the cover part. Menu'986 shows that it is old and conventional to provide a lid with

the peripheral part of the lid's surface can be embossed/coarse and the central part of the lid's surface is not embossed/smooth. It would have been obvious to one having ordinary skill in the art in view of Menu'986 to modify the cover part of Lambert so the partial ovoid portions comprises a different surface structure than the remaining portions of the cover part such as the surface structure of the portions is constructed with relatively smooth and the remaining surface structure of the lid is relatively coarse for decorative purposes.

10. Claims 18-21, 29-31, 34, 35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert in view of Bixler (3,362,605). Lambert discloses the packaging unit as above having most of the limitations of the claims except for the shape of the at least one opening and at least one protrusion being substantially correspond to a longitudinal cross-section through an egg. Bixler shows a display and distribution packaging unit (10) for eggs comprising a bottom part (12) having at least one longitudinal protrusion (next to numeral reference 30 in Figure 5) and a covert part (14) having at least one longitudinal opening configured to receive the protrusion (Figure 11). It would have been obvious to one having ordinary skill in the art in view of Bixler to modify the packaging unit of Lambert so the at least one protrusion comprises at least one longitudinal protrusion and the at least one opening comprises at least one longitudinal opening to provide a better locking packaging unit. With respect to the shape of the at least one opening and the at least one protrusion, it would have been obvious to one having ordinary skill in the art to modify the shape of the at least one opening and the at least one protrusion of Lambert as modified so the shape is substantially correspond to a longitudinal cross-section through an egg for decorative purposes and because a change in form or shape is

generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

As to claims 29-31, to the degree that Lambert fails to disclose the bottom part comprises a pattern of supporting ribs, Bixler further shows the bottom part comprises a pattern of supporting ribs (Figures 2 and 4). It would have been obvious to one having ordinary skill in the art in view of Bixler to modify the bottom part of Lambert so the bottom part includes a pattern of supporting ribs for better supporting the eggs disposed within the unit.

11. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert in view of The French Publication No. 2.133.279 to Vauchier. Lambert discloses the packaging unit as above having most of the limitations of the claims except for the interface between the cover part and the bottom part being inclined downwardly from the rear side of the packaging unit to the front side.

Vauchier shows a container comprising an interface between a cover part (11) and a bottom part (12) inclined downwardly from the rear side of the container to the front side (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Vauchier to modify the packaging unit of Lambert so the interface between the cover part and the bottom part inclined downwardly from the rear side of the packaging unit to the front side for better displaying the eggs and to facilitate removing the eggs from the packaging unit.

12. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert in view of Seest et al. (3,471,078; hereinafter Seest'078). Lambert discloses the

packaging unit as above having most of the limitations of the claims except for the lower edge of the front surface of the cover part being curved in a downward direction beneath the interfaced between the cover part and the bottom part.

Seest'078 shows a packaging unit comprising a cover part (12) having a front surface with a lower edge (36) curved in a downward direction beneath the interface (32, 38) between the cover part and a bottom part (10) to facilitate opening the unit. It would have been obvious to one having ordinary skill in the art in view of Seest'078 to modify the packaging unit of Misdom'027 or Hartmann so the lower edge of the front surface curved in a downward direction beneath the interface between the cover part and the bottom part to facilitate opening the unit.

Response to Arguments

Applicant's arguments filed on 1/27/2009 have been fully considered but they are not deemed to be persuasive.

Applicant indicated that the claims had been amended and provided consistent with the interview is noted. The Examiner has found that currently amended claim 1 is not consistent with the proposed claim 1 during the interview on 1/7/2009 (see below) and also there was no claim 40 at the time of the interview.

1. (Proposed Amended) A display and distribution packaging unit for eggs or similar fragile articles, said packaging unit comprising:
a bottom part comprising nonplanar side surfaces of egg-shaped compartments which match at least partially the outer contours of the eggs contained within said unit, and
a cover part comprising a top surface and substantially planar front and rear side surfaces, and substantially partially planar opposing end faces, said cover part comprising partial oval portions being adapted to match the shape of the eggs contained within said unit, said portions extending from the middle being located on at least one of the planar end faces of said cover part, said portions matching the shape of the eggs contained within the unit, wherein the shape is formed as part of a three-dimensional object defined by a two-dimensional object being rotated about an axis of revolution substantially normal to said top surface of the cover part, such that the partial oval portions extend up from the partial planar end faces.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb
March 26, 2009

/Luan K. Bui/
Primary Examiner
Art Unit 3728